

BIDDER/PROPOSAL OFFEROR FURNISH THE PERFORMANCE BOND SET FORTH IN TEX. LOC. GOV'T CODE ANN. §262.032(b), MAY LANGUAGE BE ADDED TO COUNTY BID/PROPOSAL SPECIFICATIONS WHICH SO STATES AND THAT THE COUNTY'S POLICY IS NOT TO DEMAND SUCH BOND?

6. IF THE BIDDER/PROPOSAL OFFEROR FULLY PERFORMS THE CONTRACT WITHIN TEN DAYS OF THE SIGNING THEREOF, BUT FAILS TO PROVIDE THE COUNTY WITH A PERFORMANCE BOND AS SET FORTH IN TEX. LOC. GOV'T CODE ANN. §262.032(b), WOULD THE FAILURE TO PROVIDE SAID PERFORMANCE BOND INVALIDATE THE CONTRACT?

7. IF THE BIDDER/PROPOSAL OFFEROR FULLY PERFORMS THE CONTRACT AFTER THE EXPIRATION OF THE TEN DAY PERIOD FOLLOWING THE SIGNING OF THE CONTRACT, BUT FAILS TO PROVIDE THE COUNTY WITH A PERFORMANCE BOND AS SET FORTH IN TEX. LOC. GOV'T CODE ANN. §262.032(b), WOULD THE FAILURE TO PROVIDE SAID PERFORMANCE BOND INVALIDATE THE CONTRACT?

8. IF THE ANSWER TO QUESTION NUMBER 6 IS "YES", AT WHAT POINT IN TIME WOULD THE CONTRACT BE CONSIDERED INVALID?

9. IF THE ANSWER TO QUESTION NUMBER 7 IS "YES", AT WHAT POINT IN TIME WOULD THE CONTRACT BE CONSIDERED INVALID?

10. IF THE BIDDER/PROPOSAL OFFEROR FULLY PERFORMS THE CONTRACT WITHIN TEN DAYS OF THE SIGNING THEREOF, BUT FAILS TO PROVIDE THE COUNTY WITH A PERFORMANCE BOND AS SET FORTH IN TEX. LOC. GOV'T CODE ANN. §262.032(b) OR PROVIDES THE PERFORMANCE BOND AFTER THE EXPIRATION OF THE TEN DAY PERIOD, WOULD THIS BE CONSIDERED A BREACH OF THE CONTRACT? AT WHAT POINT IN TIME WOULD THE BREACH BE DEEMED TO HAVE OCCURRED? WHAT WOULD BE THE MEASURE OF DAMAGES FOR SUCH BREACH?

11. IF THE BIDDER/PROPOSAL OFFEROR FULLY PERFORMS THE CONTRACT AFTER THE EXPIRATION OF THE TEN DAY PERIOD FOLLOWING THE SIGNING OF THE CONTRACT, BUT FAILS TO PROVIDE THE COUNTY WITH A PERFORMANCE BOND AS SET FORTH IN TEX. LOC. GOV'T CODE ANN. §262.032(b) OR PROVIDES THE PERFORMANCE BOND AFTER THE EXPIRATION OF THE TEN DAY PERIOD, WOULD THIS BE CONSIDERED A BREACH OF THE CONTRACT? AT WHAT POINT IN TIME WOULD THE BREACH BE DEEMED TO HAVE OCCURRED? WHAT WOULD BE THE MEASURE OF DAMAGES FOR SUCH BREACH?

January 28, 1992

Dear Sir:

H.B. 1627, 72nd Leg., R.S., amended Tex. Loc. Gov't Code Ann. §262.032(b) so as to require, within 10 days after the date of the signing of a contract or issuance of a purchase order following the acceptance of a bid or proposal, the bidder or proposal offeror to furnish a performance bond to the county for the full amount of the contract if that contract exceeds \$50,000. The Harris County Purchasing Agent and Commissioners Court have requested advice on the above-referenced questions which deal with the implementation of this statutory provision.

The problems posed by the amendment are numerous. For example, Attorney General Opinion MW-494 requires counties to use competitive bids for insurance contracts. Many insurance contracts will exceed \$50,000. Since the contract will not be fully performed until the insurance coverage expires, the insurance company would be required under the provisions of §262.032(b) to have a performance bond in effect for the entire term of the insurance coverage. Thus, in effect, the insurance company would be purchasing its own "insurance policy" to insure its providing insurance coverage to the county. Additionally, the cost of such a performance bond will, inevitably, add considerable costs to the county in acquiring such coverage.

The concern of various Harris County officials and the general public about this amendment is demonstrated in the newspaper article and the newspaper editorial we have enclosed for your review.

Please furnish us with your opinion on the questions presented. A Memorandum Brief is enclosed. In that this amendment is of great public importance and will have a considerable impact on each and every county and taxpayer in the State of Texas, we would appreciate your expediting your reply to these questions.

Sincerely,

MIKE DRISCOLL
County Attorney
By ROBERTA LLOYD FREMAUX
Assistant County AttorneyMD:RLF
Enclosures